Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association	))	

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") submits this reply in response to the comments filed on February 26, 2003 and in support of the Petition for Declaratory Ruling filed by the Cellular Telecommunications & Internet Association on January 23, 2003 ("CTIA Petition").

I. THE FCC MUST REJECT THE ILEC ARGUMENT THAT IT SHOULD SEVERELY LIMIT INTERMODAL PORTING AND THEREBY INHIBIT INTERMODAL COMPETITION

The issue CTIA raises in its Petition is straightforward: will Wireless Number Portability ("WNP") be used to facilitate, or inhibit, intermodal competition? According to incumbent local exchange carriers ("ILECs"), ILEC customers should be precluded from porting their existing telephone numbers to wireless carriers unless the wireless carrier first obtains additional numbering resources in the rate center where the ILEC customer is located. ILECs would thus pose a Hobson's Choice on wireless carriers: wireless carriers must either: (1) obtain scarce numbering resources they may never use so ILECs will permit their customers to port their numbers to them, or (2) continue to implement the Commission's number conservation policies, but lose the opportunity to invite ILEC customers to substitute wireless service by porting their numbers to them. It is important to emphasize that ILECs want the FCC to authorize them to prevent most of their customers (or at least, customers in the vast majority of their rate centers) from porting their numbers to wireless carriers.[1]

The ILEC position is flatly inconsistent with the plain requirements of the Communications Act. Section 251(b)(2) of the Act imposes on all LECs, but not CMRS providers,[2] the "duty" to provide number portability.[3] Congress has further specified that LECs must permit their customers to "retain, at the same location, existing telecommunications numbers" when switching to another "telecommunications carrier," which includes CMRS providers.[4] An ILEC customer wanting to port his or her number to a CMRS carrier meets the "same location" requirement; after all, in porting his or her number, the ILEC customer makes clear his/her intent to substitute wireless service for the ILEC's services.

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1 T-Mobile pointed out in its comments that it has numbering resources in only 12.6% of the rate centers in the states where it provides its services. *See* T-Mobile Comments at 7. This is similar to the situation of other CMRS carriers. *See* Midwest Wireless Holdings Comments at 3 (It holds numbering resources in only one of 11 ILEC rate centers); United States Cellular Corporation Comments at 3 (In one LATA examined, USCC holds numbering resources in only 13 of 196 ILEC rate centers). *See also* CTIA Petition at 6. Thus, under the ILEC position, ILEC customers in the vast majority of ILEC rate centers would be precluded from porting their numbers to wireless carriers.

2 *See Telephone Number Portability, First Report and Order,* 11 FCC Rcd 8352, 8355 ¶ 4 (1996)("*First LNP Order*")("The statute explicitly excludes CMRS providers from the definition of local exchange carriers, and therefore from the section 251(b) obligations to provide number portability.").

3 47 U.S.C. § 251(b)(2).

4 47 U.S.C. § 153(30). In this regard, the FCC has already ruled that "the statutory obligation of LECs to provide number portability runs to other telecommunications carriers. Because CMRS falls within the statutory definition of telecommunications service, CMRS carriers are telecommunications carriers under the 1996 Act. As a result, LECs are obligated under the statute to provide number portability to customers seeking to switch to CMRS carriers." *First LNP Order,* 11 FCC Rcd at 8357 ¶ 8.

ILECs complain, however, there is no "competitive parity" if wireless carriers do not have non-ported customers with numbers that are rated in the same rate center.[5] Congress, however, imposed only one limitation on a LEC's duty to provide number portability: technical infeasibility.[6] No ILEC asserts that it is technically infeasible for them to port their customers' numbers to wireless carriers, and the ILECs' purported "competitive parity" concerns do not meet the definition of technical infeasibility.[7] Moreover, given that Congress specifically imposed a number portability obligation on LECs but not on CMRS carriers, it is clear that Congress has already rejected the very "competitive parity" argument that the ILECs now make (because Congress envisioned that LECs would port numbers to wireless carriers but not *vice versa*).

T-Mobile agrees with the California Public Utilities Commission ("CPUC") that the FCC should resolve the CTIA Petition "in favor of consumers and competition."[8] The CPUC, after considering these factors, "urge[s] the FCC to require wireline carriers to port their customer's numbers to the facilities of the wireless carrier the customer chooses."[9] The CPUC notes that not only would consumers "lose" under the ILEC position, but that the ILEC position would effectively force wireless carriers to obtain numbers in "every rate center," which would result in "many numbers [being] unnecessarily stranded."[10]

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5 T-Mobile questions whether any mobile customer will want to port his or her number to a LEC's landline service. After all, the vast majority of CMRS customers today (well over 90 percent) are also customers of landline service.

6 *See* 47 U.S.C. § 252(b)(2). *See* AT&T Wireless Comments at 6.

7 *See* 47 C.F.R. § 51.5 ("A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns.").

8 CPUC Comments at 10.

9 *Id.* at 11.

10 *Ibid.* FCC number assignment rules give carriers a right to obtain numbers in every rate center where they provide their services. *See* 47 C.F.R. § 52.15(g). Nevertheless, most

The New York Department of Public Service ("NYDPS") astutely commented that the Telecommunications Act of 1996 (47 USC 153 [30]) requires LECs to implement number portability in such a way that LEC customers can keep their telephone numbers when they switch to any other telecommunications carrier, including, therefore, when they switch to commercial mobile radio services providers.[11] T-Mobile agrees with the NYDPS conclusions that "the Commission should explicitly reaffirm that a wireline carrier must port a customer's telephone number to a wireless carrier if a wireless carrier's serving center overlaps the rate center of the wireline carrier"[12] and that "artificial barriers to intermodal competition should not be condoned."[13] Commissioner Adelstein observed recently that "it is the Commission's role to encourage all type of competition Congress anticipated," including "intermodal" competition, noting specifically that wireless services "offer a dynamic and burgeoning new avenue for competition in both broadband and voice communications."[14] The Commission can facilitate intermodal competition between ILECs and wireless carriers only by granting the CTIA Petition and by rejecting the ILEC arguments that seek to inhibit intermodal competition by making it more difficult for many of their customers to switch to wireless services.

II. <u>THE INTERCONNECTION ISSUES RAISED BY CERTAIN ILECS ARE NOT RELEVANT TO THE CTIA PETITION, IN ADDITION TO BEING INCORRECT</u>

CMRS carriers, sensitive to the FCC's number conservation policies, generally obtain numbering resources only in those rate centers that are deemed critical to their services.

11 NYDPS comments at 3.

12 Id. at 4.

13 Id. a t 3.

14 Written Statement of the Honorable Jonathan S. Adelstein, FCC Commissioners, before the Subcommittee on Telecommunications and the Internet Committee on Energy and Commerce, U.S. House of Representatives, "Health of the Telecommunications Sector: A Perspective from the Commissioners of the Federal Communications Commission" (Feb. 26, 2003).

Several rural ILECs raise a variety of interconnection issues in their comments. For example, the Michigan Exchange Carriers Association complains that "[i]f the CTIA proposal is adopted, . . . the ILEC would have to bear transport costs needed to reach the tandem switch and subsequently the wireless carrier's MTSO."[15] The Rural Telecommunications Group contends that the CTIA Petition "raises serious questions of how a call to the ported number must be routed and how the originating carrier will be compensated if at all."

> The CTIA Petition, therefore fundamentally impacts the rating and routing of intercarrier calls and this impact must be carefully considered.[16]

Similarly, the National Exchange Carrier Association asserts that grant of the CTIA petition would "place a disproportionate burden on rural ILECs . . . to transport originating calls to the [wireless carrier] POIs."[17]

In fact, the routing of land-to-mobile traffic (and the compensation arrangements for such traffic) does not change whether a mobile customer happens to have a "mobile" telephone number (assigned by the CMRS carrier) or a number that the customer ported from the ILEC. In each case, the originating ILEC routes the call to the Mobile Switching Center ("MSC") identified for the number, whether in the Local Exchange Routing Guide ("LERG") or via the Location Routing Number ("LRN"). These rural ILECs are thus mistaken in suggesting that the routing of land-to-mobile traffic (and the associated compensation arrangements) will somehow change for wireless customers with ported numbers (as opposed to numbers assigned by their

15 Michigan Exchange Carriers Association ("MECA") Comments at 3.

16 Rural Telecommunications Group ("RTG") Comments at 3 and 4.

17 Joint National Exchange Carrier Association ("NECA") and the National Telecommunications Cooperative Association (NTCA) Comments at 6.

wireless carrier).[18] Put another way, the issues these ILECs continue to raise would not be resolved even if the Commission was to deny the CTIA Petition.

Even if these arguments were relevant to the CTIA petition, the rural ILEC view of their interconnection obligations under the Act is flawed. The Act expressly recognizes that competitive carriers like CMRS providers may interconnect indirectly with other carriers,[19] and the Commission has recognized that such carriers need establish only one Point of Interconnection ("POI") in each LATA.[20] Given FCC rules specifying that reciprocal compensation applies to all intraMTA traffic involving a CMRS carrier,[21] it necessarily follows that an ILEC has the obligation to route without charge landline-originated mobile traffic to the designated CMRS carrier at its centralized POI within the LATA.[22]

Completely baseless is NECA's assertion that these settled interconnection rules, which have been repeatedly affirmed on appeal,[23] "place a disproportionate burden on rural

18 Completely baseless is the suggestion by Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") that calls to a given ILEC number that are local today will become toll calls once the number is ported to a wireless carrier. *See* OPASTCO Comments at 2. ILECs rate their calls as local or toll by comparing the NPA-NXX of the calling and called numbers. Thus, if a call to a number is local before the number is ported, the call will necessarily remain a local call after the number is ported.

19 *See* 47 U.S.C. § 251(a)(1).

20 *See, e.g., Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, 9634 ¶ 72 (2001).

21 *See* 47 C.F.R. § 51.701(b)(2).

22 *See* 47 C.F.R. § 51.503(b)("A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

23 *See, e.g., Qwest v. FCC,* 252 F.3d 462 (D.C. Cir. 2001)(court affirms that LECs may not charge CMRS carriers for the facilities they use in delivering LEC traffic to the CMRS network); *Iowa Utilities Board v. FCC,* 120 F.3d 753 (8th Cir. 1997)(court affirms FCC's CMRS-LEC interconnection rules). Notably, not one ILEC appealed these LEC-CMRS interconnection rules to the Supreme Court.

ILECs."[24] While rural ILECs have the obligation to route their land-to-mobile traffic to the centralized MSCs, wireless carriers face the identical transport "burden" for their mobile-to-land traffic – namely, they must route their calls (without charge) to the destination rural ILEC serving the ILEC customer being called. Thus, the transport "burden" imposed by FCC rules on the originating carrier, whether a LEC or CMRS provider, is *identical*.

Rural ILECs have asked the Commission to change its interconnection rules in its Docket 01-92 rulemaking proceeding, as is their right. The important point here, though, is that grant or denial of the CTIA Petition will not effect either the validity of the existing interconnection rules or the FCC's consideration of the rural ILEC proposal in Docket 01-92 to change these rules.

III. NECA'S ROLE AS AN INDUSTRY CLEARINGHOUSE SHOULD BE REEXAMINED IF NECA INSISTS ON TAKING POSITIONS REFLECTING THE INTERESTS OF ONLY ONE INDUSTRY SEGMENT

The National Exchange Carrier Association ("NECA") is a creature of the FCC. The FCC formed NECA nearly 20 years ago, and the FCC determines what lines-of-business NECA may enter. NECA performs a variety of clearinghouse functions for several FCC programs, including the universal service fund ("USF") and telecommunications relay service ("TRS") programs and billing and collection functions pertaining to the North American Numbering Plan ("NANP"). The FCC has held that in the performance of these functions involving programs that touch virtually every telecommunications carrier, it is "essential" that NECA provide "the appearance of impartiality."[25]

24 Joint NECA and NTCA Comments at 6.

25 *See Federal-State Joint Board on Universal Service, Report and Order,* 12 FCC Rcd 8776, 9216 ¶ 866 (1997).

With increasing frequency, NECA is submitting comments in a variety of proceedings that reflect the business interests of one industry segment (*i.e.,* rural ILECs) and that are adverse to the interests of other industry segments.[26] T-Mobile submits that NECA does not, and cannot, maintain the appearance of impartiality when it openly takes positions favoring the interests of one industry segment that are adverse to other industry segments.

What makes NECA's public advocacy so perplexing is that NECA is taking positions in areas beyond its scope, such as intercarrier interconnection. For instance, in its comments in this proceeding, NECA asserts that the current interconnection rules "place a disproportionate burden on rural ILECs,"[27] which is patently inaccurate as demonstrated above. In the same comments, NECA further criticized T-Mobile:

> T-Mobile claimed that the amount of traffic involved was not enough to make it worthwhile to negotiate other compensation arrangements. However, these terminating charges, including access charges, are a critical revenue stream to rural ILECs.[28]

NECA should have qualified its statement by noting that T-Mobile has explicitly stated its "willing[ness] to negotiate an interconnection agreement with these small ILECs, upon request, *even though the dollars involved often do not justify the time and expense with negotiating an interconnection contract, preparing monthly statement, and auditing amounts billed*" and that T-Mobile does in practice routinely enter into such arrangements.[29] And, NECA's apparent

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[26] *See, e.g.,* NECA Comments, CC Docket No. 95-116 (Feb. 26, 2003); NECA Ex Parte, CC Docket No. 95-116 (Sept. 25, 2002); NECA Comments, CC Docket No. 02-53 (June 14, 2002); NECA Comments, CC Docket No. 96-98 (May 6, 2002); NECA Comments, CC Docket No. 01-318 (Jan. 22, 2002); NECA Comments, CC Docket No. 95-116 (Aug. 6, 2001); NECA Comments, CC Docket No. 96-98 (April 5, 2001).

[27] Joint NECA and NTCA Comments at 6.

[28] *Id.* at 7.

[29] T-Mobile and Western Wireless Petition for Declaratory Ruling, CC Docket No. 01-92, at 4 (Sept. 6, 2002)(emphasis added).

position that rural ILECs can impose access charges for terminating intraMTA CMRS traffic is flatly inconsistent with FCC rules affirmed on appeal.[30]

If NECA wants to act as a clearinghouse for Commission programs on behalf of the entire industry, then NECA should reexamine its current practice of filing advocacy pleadings on behalf of only one industry segment. If, on the other hand, NECA wants to become an advocate for one particular industry segment, then it should relinquish those functions that it performs on behalf of the entire industry so the functions can be performed by an entity that is not biased.

30 *See* 47 C.F.R. § 51.701(b)(2); *Iowa Utilities Board v. FCC,* 120 F.3d 753 (8th Cir. 1997).

IV. CONCLUSION

For the foregoing reasons, the FCC should grant CTIA's Petition for Declaratory Ruling.

Respectfully submitted,

T-MOBILE USA, INC.

By: /s/ Harold Salters

Harold Salters
Director - Federal Regulatory Affairs

Anna Miller
Director - Numbering Policy

Michele Thomas
Corporate Counsel

T-Mobile USA, Inc.
401 9th Street, N.W., Suite 550
Washington, D.C. 20004
(202) 654-5900

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